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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/828,563	04/21/2004	Robert Korn	KORN 201- KFM	5265
7590	04/26/2006		EXAMINER	
Karl F. Milde, Jr., Esq. MILDE, HOFFBERG & MACKLIN, LLP Suite 460 10 Bank Street White Plains, NY 10606			FETSUGA, ROBERT M	
			ART UNIT	PAPER NUMBER
			3751	
DATE MAILED: 04/26/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/828,563	KORN, ROBERT	
	Examiner	Art Unit	
	Robert M. Fetsuga	3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 21 April 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-20 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 21 April 2004 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 06/18/04.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____

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1. The drawings are objected to because reference numeral "38" (pg. 9 ln. 11) is missing from Fig. 2.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the subject matter set forth in claim 20 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the

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applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Proper antecedent basis for the "substantially perpendicularly" feature (both recitations) and "extending parallel" feature (both recitations) set forth in claim 1, subject matter set forth in claims 3 and 7, "at least two" feature set forth in claim 4, and "at least one" feature set forth in claim 15, could not be found in the specification. Applicant is reminded claim terminology in mechanical cases should appear in the descriptive portion of the specification by reference to the drawing(s).

3. Claim 20 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Implementation of the recited subject matter is neither taught by the instant disclosure nor evident to the examiner.

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4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 1, 3, 4, 7 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Van Riemsdyck.

The Van Riemsdyck reference discloses a hand rail comprising: a hand rail 62; two horizontal anchors 38 including end pieces 42 and suction cups 66; and two vertical anchors 28 including end pieces 29 and suction cups 66, as claimed. Re claims 4 and 14, the language is relative and connotes no definite structure.

6. Claims 8 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Van Riemsdyck and Morrison.

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Although the anchors of the Van Riemsdyck bathtub support do not include pivotal connections, as claimed, attention is directed to the Morrison reference which discloses an analogous bathtub support which further includes an anchor 3 having a pivotal connection 6 (for example). Therefore, in consideration of Morrison, it would have been obvious to one of ordinary skill in the bathtub support art to associate pivotal connections with the Van Riemsdyck anchors in order to accommodate different wall slopes.

7. Claims 4, 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Van Riemsdyck and Slater.

Although the Van Riemsdyck bathtub support does not include plastic piping, as claimed, attention is directed to the Slater reference which discloses an analogous bathtub support which further includes plastic piping (col. 1 lns. 58-61). Therefore, in consideration of Slater, it would have been obvious to one of ordinary skill in the bathtub support art to associate plastic piping with the Van Riemsdyck bathtub support as being corrosion and heat resistant.

8. Claims 1, 3, 4, 7 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tilson et al., Van Riemsdyck and Sullivan.

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The Tilson et al. (Tilson) reference discloses a hand rail comprising: a hand rail 26; two horizontal anchors 70,72; and two vertical anchors 54. Re claims 4 and 14, the language is relative and connotes no definite structure. Therefore, Tilson teaches all claimed elements except for the provision of suction cups.

Although the anchors of the Tilson bathtub support do not include suction cups, as claimed, attention is directed to the Van Riemsdyck reference which discloses an analogous bathtub support which further includes anchors 28,38 having suction cups 66. Therefore, in consideration of Van Riemsdyck, it would have been obvious to one of ordinary skill in the bathtub support art to associate suction cups with the Tilson anchors in order to facilitate removal after use. Furthermore, the Sullivan reference is cited as evidence that one skilled in the bathtub support art would recognize the need to avoid engaging suction cups over a tile grout line (col. 2 lns. 59-64).

9. Claims 1, 3, 4, 7, 8, 11 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tilson, Van Riemsdyck and Sullivan as applied to claim 1 above, and further in view of Morrison.

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To associate pivotal connections with the Tilson anchors would have been obvious to one of ordinary skill in the art in consideration of Morrison analogous to the discussion supra.

10. Claims 2, 4-6 and 9-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tilson, Van Riemsdyck and Sullivan as applied to claim 1 above, and further in view of Slater.

To associate plastic piping with the Tilson bathtub support would have been obvious to one of ordinary skill in the art in consideration of Slater analogous to the discussion supra. Furthermore, the choice of rail material would appear an obvious choice to be made. Slater also teaches use of commonly available pvc piping which conveniently includes elbow connectors and T-connectors.

11. Applicant is referred to MPEP 714.02 and 608.01(o) in responding to this Office action.

12. Any inquiry concerning this communication should be directed to Robert M. Fetsuga at telephone number 571/272-4886 who can be most easily reached Monday through Thursday. The Office central fax number is 571/273-8300.



Robert M. Fetsuga
Primary Examiner
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